

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:08-cr-00132

LARRY ROBERT JACKSON,

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Larry Jackson's Motion for Temporary Release on Bond [Docket 98]. Defendant, who is pursuing an appeal of his sentence, seeks temporary release from detention so that he may travel to Morgantown, West Virginia, with his daughter as she undergoes surgery. Defendant asserts that his uncle, Anthony Jackson, will serve as Defendant's custodian for the requested two-day release.

18 U.S.C. § 3143(a) and Rule 46(c) of the Federal Rules of Criminal Procedure provide that a defendant may be released from detention during the pendency of an appeal. A defendant seeking release bears the burden of demonstrating by clear and convincing evidence that he "will not flee or pose a danger to any other person or to the community." Fed. R. Cr. P. 46(c); *see also United States v. Taliaferro*, 779 F. Supp. 836, 838 (E.D. Va. 1992); *United States v. Quicksey*, 371 F. Supp. 561, 564 (S.D. W. Va. 1974) (Hall, J.).

Defendant has not met his burden under Rule 46. During the period of pretrial release, Defendant's probation officer filed three petitions alleging that Defendant violated four conditions

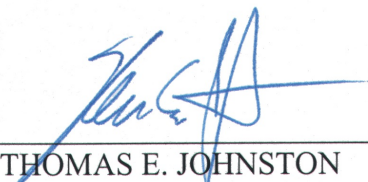
of his bond. Defendant allegedly (1) failed to abide by the terms of his home confinement on numerous occasions, (2) neglected to submit a Written Monthly Report to his probation officer, (3) continued to engage in criminal conduct, and (4) possessed a loaded firearm. The Court never addressed the allegations in the petitions because Defendant was in state custody on separate charges for which he has since been sentenced to a term of imprisonment. In addition, at Defendant's sentencing hearing, the Court heard testimony that Defendant had communicated threats to a law enforcement officer.

In light of Defendant's history, his proposal that he be supervised by his uncle for the duration of his release is insufficient to demonstrate that he will not flee or pose a danger to any other person or to the community. Accordingly, the Motion for Temporary Release on Bond [Docket 98] is **DENIED**.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: October 2, 2009

A handwritten signature in blue ink, appearing to read 'Th. Johnston', is written over a horizontal line.

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE